IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 835 of 1978

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAMLABEN W/O ISHWWARLAL P.

Versus

MADHUBHAI DAHYABHAI

Appearance:

1. First Appeal No. 835 of 1978

MR MB GANDHI for Appellant

MR CHETAN PANDYA for MR SV RAJU for Respondent No. 1

..... for Respondents No. 2-18

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 07/01/2002

ORAL JUDGEMENT

In this appeal filed under Section 96 of the Code of Civil Procedure, 1908 ('The Code' for short),

appellant, who is the original plaintiff, has questioned the legality and validity of the judgement and decree recorded in Civil Suit No. 2157 of 1972 by the City Civil Court, Ahmedabad, by which the appellant's claim in the suit is partly allowed by permanently restraining the respondents from committing or doing any act or thing so as to obstruct the appellant in the joint use and occupation of the property bearing Survey No. 3186 and in exercise of her right of joint ownership to the extent of one-third share over the said property consisting of the chowk and the khadki and the respondents are restrained from making any construction in the said chowk and khadki without the consent of the appellant whereas appellant's claim for mandatory injunction for removing that chowk and khadki is rejected.

2. The appellant has purchased property bearing new survey No. 3183 situated in Khadia Ward No. 3 in the city of Ahmedabad, on February 25, 1963 under a registered sale deed in consideration of Rs.8000/= from Chimanlal Tribhovandas Shah and Shantilal Tribhovandas Shah. The appellant has purchased the said property along with 103 Sq. yards comprised in new survey No. 3186, which survey No. is of the joint ownership and possession of three joint owners, and therefore appellant has one-third undivided share in the said property bearing survey No. 3186. According to the appellant, there are two rooms in the said khadki and there is one room made up of corrugated sheets in the said chowk and there is a water tank and a bathroom also in the said chowk and as the above constructions which are disputed constructions in the suit are in the chowk and the khadki, the owner of all the three survey numbers, namely, Nos. 3183, 3184 and 3185, are entitled to joint possession thereof and are entitled to use the same jointly and the owners of the other two survey numbers, namely, Nos 3185 are not entitled to exclusive use thereof and they can not prevent the appellant from making use of the same. The appellant, therefore, prayed for the relief of mandatory injunction directing defendants to remove the disputed constructions from the chowk and the khadki, and also prayed for permanent injunction restraining the defendants from doing, committing any act or acts, so as to oust the appellant from the exercise of her right over the said disputed constructions and for a permanent injunction restraining the respondents from making any katcha or pucca construction over the land of the said chowk and the khadki and also prayed for a decree for such sum of money as may be ascertained on account of the said corrugated sheet room having been leased out to tenant by all or any

of the defendants who are found to have leased out the same to tenant and who have been recovering rent from the tenant and the appellant has claimed one-third share out of the amount of rent realised by the respondents.

3. The suit was contested by all the respondents by filing separate written statements. Respondent Nos. 1 & 10 filed written statement, inter alia denying that the appellant has one-third share in the said chowk and khadki. It was admitted that the appellant has only right of passage. The constructions made in the khadki and chowk are legal. The said disputed constructions are very old and they existed since long and the ancestors of the respondents were making use of the said constructions within the knowledge of the appellant and his predecessor in-title. It was also denied that they have no right to lease out the sheet room. It was pleaded that the suit was barred by law of limitation, estoppel, delay and laches and adverse possession and, therefore, it was prayed to dismiss the suit. It may be appreciated that remaining respondents, adopted the same written statement and prayed to dismiss the suit.

4. The learned City Civil Judge, on the basis of the material on record framed as many as nine issues at Exhibit-64. The learned City Civil Judge, Ahmedabad, after recording evidence and appreciation thereof and considering the documentary evidence on record came to the conclusion that the appellant was the owner of the property bearing survey No. 3183 and has one-third undivided share and interest in the property bearing survey No. 3186 and the respondents of property bearing survey No. 3184 and 3185 had no right to put up any construction on any portion of survey No. 3186 comprising of chowk and khadki in dispute without consent of all joint owners. It is also held that the disputed construction in chowk and khadki was not made illegally and unauthorisedly as alleged in the plaint as the construction was existing there since many years and, therefore, the learned Trial Judge has recorded the decree as prayed for in part and refused the mandatory injunction which has given rise to the present appeal at the instance of the original plaintiff as well as cross objection at the instance of original defendant No.2.

5. Mr. M.B.Gandhi, learned advocate for the appellant contended that when the Trial Court has held that respondents have no right to put up any construction on any portion of the survey No. 3186 comprising of chowk and khadki which were in dispute, there was no reason to reject the claim of the appellant for mandatory

injunction as prayed for in the plaint. He contended that the finding recorded in para 31 of the impugned judgement is contrary to the evidence on record. He, therefore, urged to allow this appeal by granting mandatory injunction against the respondents by ordering to pull down that illegal construction which was put up by the respondents.

6. Mr. Chetan Pandya, learned advocate for the respondent No.1 contended that there is no evidence worth consideration against the respondents. The appellant has no right, title and interest in the said chowk and khadki even to the extent of one-third share as he has got only right of passage from that chowk and khadki. So far as the alleged construction is concerned, it existed there since time immemorial and their predecessors made the said construction. So far as the right to lease out the iron sheet room is concerned, there is no evidence to show that the respondent has no right to lease out the said iron sheet room. It is also contended that suit was time barred by way of estoppel and laches. Therefore, it is urged by the learned advocate that the decree recorded in favour of the appellant is required to be quashed and set aside by dismissing the suit in toto by allowing cross objections.

7. I have considered the submissions advanced by the learned advocates appearing for the parties. i have perused the judgement and decree which is impugned in this appeal and also the evidence recorded by the Trial Court and the documentary evidence produced by the parties. I have also perused the evidence recorded by the learned Trial Judge as well as documentary evidence considered by him.

8. It may be stated that on behalf of the appellant, two witnesses have been examined whereas on behalf of the respondent, respondent No. 2 has entered into the witness box. Now, on having reassessment and reevaluation of the evidence, it can be noticed that the plaintiff had relied upon the extract from property register in respect of survey No. 3183. It is at Exhibit-76. It unequivocally showed that the appellant has purchased the said survey No. from Chimanlal Tribhovandas and Shantilal Tribhovandas alongwith one-third share in survey No. 3186 which comprises of right of Khadki and Chowk. The said evidence remained uncontroverted by the respondent side. The appellant had also relied upon the sale-deed dated July 3, 1962, Exhibit-67 which was executed in favour of Chimanlal Tribhovandas and Shantilal Tribhovandas by Virendra

Dahyabhai Mehta regarding the sale of survey no. 3183. Therefore, in my view, aforesaid documentary evidence from the city survey records strongly support the case of the appellant that the disputed chowk and the khadki are of the joint ownership of the owners of the said three survey nos. 3183, 3184 and 3185. Therefore, in my view, Trial Court has very rightly recorded the decree in part in favour of the appellant restraining the defendant permanently from committing or doing any act or thing so as to obstruct the appellant in the joint use and occupation of the property bearing survey no. 3186 and in exercise of her right of joint ownership to the extent of one-third share over the said property consisting of the chowk and the khadki and also restrained the respondents from making any construction in the said chowk and khadki without the consent of the appellant.

9. Now, that takes me to the main contention advanced by Mr. Gandhi that mandatory injunction has been wrongly refused. So far as the disputed construction is concerned, there are two rooms in the khadki, one sheet room, a bath room and a water tank. According to the appellant's husband these are new constructions made by the defendants. The learned Trial Judge has observed that the appellant was a stranger on this property and he cannot be expected to have knowledge about these constructions. It is also observed by the learned Trial Judge that the witness had admitted in his evidence that the constructions are old and he could not state anything about the age of these constructions. On behalf of the respondent also, they were unable to show when and by whom this disputed construction were made and on the basis of the said evidence, the Trial Court has refused the decree of mandatory injunction which was prayed for by the appellant to demolish the disputed construction.

10. On over all reassessment of the evidence, that is, oral as well as documentary evidence in the form of city survey record as well as sale deed, I am fully satisfied that the assessment of the evidence and analysis of the facts and circumstances and ultimate conclusion reached by the Trial Court in granting decree in part and refusing the decree for mandatory injunction, is fully justified.

11. It is a settled legal position that even at the final hearing stage when the appellate court agrees with the reasons given and conclusions arrived at by the Trial Court, it is not necessary for the appellate court to reiterate the evidence and elaborately state reasons for

reaching the same conclusion. Expression of general agreement with the reasons given and conclusions arrived at by the Trial Court would be sufficient. This is so held by the Supreme Court in the case of GIRIJANANDINI DEVI AND OTHERS V. BIJENDRA NARAIN CHOUDHARY, AIR 1967 SC 1124. In the instant case, as indicated hereinabove, I agree with the reasons given and conclusions arrived at by the Trial Court as no other conclusion was possible on the facts and in the circumstances emerging from the record of the case.

12. Seen in the above context, this appeal as well as cross objection both are found meritless and accordingly both deserve to be dismissed.

13. For the foregoing reasons, appeal as well cross objections fail and accordingly they are dismissed leaving the parties to bear their own costs.

(A.M.Kapadia, J)

Jayanti*